



Virginia Department of Rail and Public Transportation

Disadvantaged Business Enterprise (DBE) Program

August 1, 2015

Updated October 1, 2018

POLICY STATEMENT

Disadvantaged Business Enterprise Program

The Virginia Department of Rail and Public Transportation (DRPT) is committed to the policy of the U.S. Department of Transportation (DOT) which provides guidelines that this agency will utilize to ensure a level playing field and foster equal opportunity for Disadvantaged Business Enterprises (DBEs). DRPT's implementation of this policy is in keeping with the Department's objectives to be responsive to citizens' needs and to ensure equality of opportunity and compliance with Title 49, Code of Federal Regulation (CFR), Part 26.

To ensure compliance with this policy, all DRPT programs managers will monitor and evaluate the award of contracts for compliance with 49 CFR Part 26. Programs managers will also report to DRPT's DBE Liaison and Title VI Officer on the progress made towards accomplishing DRPT's stated goals. I expect all levels of management to fully support both the letter and spirit of this program. To this end, managerial, supervisory and other personnel charged with implementation of elements of this program may expect their performance evaluation to reflect, in part, the effectiveness of their response to this program.

I am therefore, charging DRPT's DBE Liaison and Civil Rights Compliance Officer with the responsibility to implement DRPT's revised DBE program and to make appropriate recommendations to me, where needed, to strengthen the program.

Jennifer L. Mitchell

Director, Department of Rail and Public Transportation

July 27, 2015

Date

OBJECTIVES (§26.1)

The Virginia Department of Rail and Public Transportation (DRPT) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. DRPT has received Federal financial assistance from the DOT, and as a condition of receiving this assistance, DRPT has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of DRPT to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also the Department's policy to:

- Ensure nondiscrimination in the award and administration of DOT assisted contracts
- Create a level playing field on which DBEs can compete fairly for DOT assisted contracts
- Ensure that the DBE Program is narrowly tailored in accordance with applicable law
- Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs
- Help remove barriers to the participation of DBEs in DOT assisted contracts
- Assist with the development of firms that can compete successfully in the market place outside the DBE Program

APPLICABILITY (§26.3)

The Virginia Department of Rail and Public Transportation is the recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the Teas-21, Pub. L. 105-178.

Definitions of Terms (§26.5)

Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR Part 121 --

- 1) Except as otherwise provided in 13 CFR Part 121, concerns are affiliates of each other when, either directly or indirectly:
 - (i) One concern controls or has the power to control the other or
 - (ii) A third party or parties controls or has the power to control both or
 - (iii) An identity of interest between or among parties exists such that affiliation may be found.

- 2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships.

Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.).

Compliance means that all activity has been correctly implemented.

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them.

Contractor means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

Department or DOT means the U.S. Department of Transportation, including, but not limited to: the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), the Federal Aviation Administration (FAA) and the Federal Railroad Administration (FRA).

Disadvantaged Business Enterprise or DBE means a for-profit small business concern --

- 1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals and
- 2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

DOT-assisted contract means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

Good faith efforts means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of "tribally-owned concern" in this section.

Joint venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Native Hawaiian means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

Noncompliance means any activity that has not been correctly implemented.

Operating Administration or Administrator means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), Federal Transit Administration (FTA) or Federal Railroad Administration (FRA). The "Administrator" of an operating administration includes his or her designees.

Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse. Primary industry classification means the four-digit Standard Industrial Classification (SIC) code designation which best describes the primary business of a firm. The SIC code designations are described in the Standard Industry Classification Manual. As the North American Industrial Classification System (NAICS) replaces the SIC system, references to SIC codes and the SIC Manual are deemed to refer to the NAICS manual and applicable codes. The SIC Manual and the NAICS Manual are available through the National Technical Information Service (NTIS) of the U. S. Department of Commerce (Springfield, VA, 22261). NTIS also makes materials available through its web site (www.ntis.gov/naics).

Primary recipient means a recipient of DOT financial assistance and passes some or all of it on to another recipient.

Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.

Program means any undertaking on DRPT's part to use DOT financial assistance, authorized by the laws to which this part applies.

Race-conscious measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

Race-neutral measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.

Recipient is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

Secretary means the Secretary of Transportation or his/her designee.

Set-aside means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms. Set-asides are illegal per the Commonwealth of Virginia procurement regulations.

Small Business Administration or SBA means the United States Small Business Administration.

Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is --

- 1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
- 2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa
 - (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race
 - (iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians
 - (iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong
 - (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka
 - (vi) Women

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

NONDISCRIMINATION (§26.7)

DRPT will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin. Moreover, in administering its DBE program, DRPT will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

BIDDERS LIST (§26.11(C))

DRPT will create a bidders list consisting of information about all DBE and non-DBE firms that bid or quote on federally funded contracts. The purpose of this requirement is to allow use of the bidders list approach to calculating overall goals. The bidders list will include name, address, DBE /non-DBE status, age, and annual gross receipts of firms. We will collect this information by including a clause in contracts requiring prime bidders to report the names/addresses, DBE status, age, and annual gross receipts of all firms who quote to them on subcontracts. DRPT has made a change to new contracts being issued as well as Requests for Proposals (RFPs) to ensure that collection of this information takes place. All RFPs are issued through the Commonwealth's procurement website eVA. RFPs can be accessed using the Solicitations, Quick Quote & Awards portal in eVA at <https://eva.virginia.gov/index.htm>. Registered eVA vendors are notified electronically of solicitations when commodity codes that they registered with match the commodity codes entered in the solicitations. The following link is the listing of vendors registered in eVA

https://logi.eprocgipdc.com/External/rdPage.aspx?rdReport=Public.Reports.Report9001_Data

DBE PROGRAM UPDATES (§26.21)

DRPT will continue to carry out this program until all funds from DOT financial assistance have been expended. DRPT will provide to DOT updates representing significant changes in the program.

OVERCONCENTRATION (§26.33)

DRPT has not identified that overconcentration exists in the types of work that DBEs perform, however, most DBEs DRPT utilizes are in the construction category.

BUSINESS DEVELOPMENT PROGRAMS (§26.35)

DRPT has not established a business development program. We will re-evaluate the need for such a program every 18 months.

SMALL BUSINESS PARTICIPATION (§26.39)

DRPT is actively committed to fostering race and gender neutral small business growth and participation in DRPT contracting. The agency demonstrates this commitment through the development of both internal and external initiatives aimed toward small firms and the agency's grantees.

Small businesses are welcome to meet with DRPT's DBE Program Liaison Officer and Procurement Officer to learn about DRPT's contracting opportunities and how to do business with DRPT. DRPT also has a "How to do Business with DRPT" tutorial on our website. DRPT staff will have an opportunity to become familiar with qualified business owners who are interested in supplying services and products to DRPT by keeping a list of interested businesses who contact DRPT. In addition, through its website, DRPT will provide information on DBE certification and DBE program requirements and procedures. This information is also available through the Virginia Department of Small Business and Supplier Diversity (DSBSD) (Attachment 1). DRPT is committed to attending at least one (1) minority business fair each calendar year to conduct outreach with small-minority owned businesses.

All DRPT subrecipients are encouraged to identify and develop smaller sized contracts to foster small business participation on DRPT or subrecipient contracts as prime and/or sub-contractors.

DRPT uses a small business enhancement award priority when seeking business for goods and services under \$5,000. For goods and services in the \$5,000 to \$100,000 range, DRPT also applies a small business enhancement award priority and uses the Quick Quote feature in Virginia's electronic procurement system eVA. DRPT determines which businesses are considered small businesses registered to do work with Virginia government agencies by using the Virginia Department of Small Business and Supplier Diversity (DSBSD) Small Women and Minority (SWAM) vendor list. This list is maintained by DSBSD, the certifying agency for Virginia, and is considered the most accurate and up to date information available for Commonwealth of Virginia agencies.

DRPT includes the following language geared toward small businesses in its RFPs:

SPECIFIC PROPOSAL REQUIREMENTS - Virginia Department of Small Business and Supplier Diversity (DSBSD) Small Businesses, Women-Owned Businesses, and Minority-Owned Businesses (SWAM) Participation – The Offeror shall indicate the percentage of DSBSD SWAM participation and specify the types of work to be performed by DSBSD SWAM subcontractors. In order to be considered for the selection of this RFP, the Offeror must include Attachment C - Small Business Subcontracting Plan in each copy of the proposal.

If the Offeror on the contract is a DSBSD certified small business, the Offeror shall indicate such in Section A of Attachment C. This shall include DSBSD certified women-

owned and minority-owned businesses that meet the small business definition and have received the DSBSD small-business certification.

If the Offeror is not a DSBSD certified small business, the Offeror is required to identify the portions of the contract the Offeror plans to subcontract to DSBSD certified small business by completing and returning Section B of Attachment C.

All DSBSD SWAM Offerors or subcontractors must be certified with DSBSD. If the Offeror or subcontractor is not certified, they must demonstrate that they are eligible to be certified, and must receive such certification prior to the solicitation due date. DSBSD can be contacted at 804.786.5560. The DSBSD SWAM goal for this contract is 15 percent. If the prime Offeror is DSBSD SWAM certified, they will receive full credit for planned involvement.

Evaluation Criteria

Multiple consultant teams will be qualified and selected by DRPT's Selection Committee as a General Planning Consultant (GPC) for rail and public transportation programs, projects, and initiatives based on the following weighted criteria:

Qualifications/experience of Offeror staff to perform the services	60 points
Commitment to SWaM	20 points
Specific plans or methodology to be used to perform services	10 points
Price	10 points
Total Points	100 points

Swam Reporting and Delivery Requirements

The Offeror shall provide to DRPT, in a form as required by DRPT, documentation that the Offeror has utilized SWAM businesses in accordance with the Offeror's SWAM utilization plan (Attachment C of the RFP). Said documentation shall be provided semi-annually or as required by DRPT.

The Offeror shall use Attachment 5 (DBE Subcontractor Report) or other form approved by DRPT to report amounts paid to SWAM and non-SWAM businesses on a quarterly basis as well as paid to date. Said attachment or other approved form shall be submitted with the monthly progress reports addressed above.

Small Business Subcontracting and Evidence Of Compliance

- A. It is the goal of the Commonwealth that 42% of its purchases be made from small businesses. This includes discretionary spending in prime contracts and subcontracts. All bidders/offerors are required to submit a Small Business Subcontracting Plan. Unless the bidder/offeror is registered as a DSBSD-certified small business and where it is not practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such subcontracting opportunities to DSBSD-certified small businesses. This shall include DSBSD-certified women-owned and minority-owned businesses when they have received DSBSD small business certification. No bidder/offeror or subcontractor shall be considered a small business unless certified as such by the Department of Small Business and Supplier Diversity (DSBSD) by the due date for receipt of bids or proposals. If small business subcontractors are used, the prime contractor agrees to report the use of small business subcontractors by providing the purchasing office at a minimum the following information: name of small business with the DSBSD certification number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product/service provided.

- B. Each prime contractor who wins an award in which a small business subcontracting plan is a condition of the award, shall deliver to the contracting agency or institution on a quarterly, basis, evidence of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the small business subcontracting plan. Upon completion of the contract, the contractor agrees to furnish the purchasing office at a minimum the following information: name of firm with the DSBSD certification number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product or service provided. Payment(s) may be withheld until compliance with the plan is received and confirmed by the agency or institution. The agency or institution reserves the right to pursue other appropriate remedies for non-compliance to include, but not be limited to, termination for default.

- C. Each prime contractor who wins an award valued over \$200,000 shall deliver to the contracting agency or institution on a quarterly basis, information on use of subcontractors that are not DSBSD-certified small businesses. Upon completion of the contract, the contractor agrees to furnish the purchasing office at a minimum the following information: name of firm, phone number, total dollar amount subcontracted, and type of product or service provided.

ATTACHMENT C – SMALL BUSINESS SUBCONTRACTING PLAN

It is the goal of the Commonwealth that over 42% of its purchases be made from small businesses. All potential bidders are required to submit a Small Business Subcontracting Plan.

Small Business: "Small business (including micro)" means a business which holds a certification as such by the Virginia Department of Small Business and Supplier Diversity (DSBSD) on the due date for bids. This shall also include DSBSD-certified women- and minority-owned businesses when they also hold a DSBSD certification as a small business on the bid due date. Currently, DSBSD offers small business certification and micro business designation to firms that qualify under the definitions below.

Certification applications are available through DSBSD online at www.DSBSD.virginia.gov (Customer Service).

Bidder Name: _____
Preparer Name: _____ Date: _____

Instructions

- A. If you are certified by the DSBSD as a micro/small business, complete only Section A of this form. This includes DSBSD-certified women-owned and minority-owned businesses when they have also received DSBSD small business certification.
- B. If you are not a DSBSD-certified small business, complete Section B of this form. For the bid to be considered and the bidder to be declared responsive, the bidder shall identify the portions of the contract that will be subcontracted to DSBSD-certified small business for the initial contract period in relation to the bidder's total price for the initial contract period in Section B.

Section A

If your firm is certified by the DSBSD provide your certification number and the date of certification.

Certification Number: _____
Certification Date: _____

Section B

Populate the table below to show your firm's plans for utilization of DSBSD-certified small businesses in the performance of this contract for the initial contract period in relation to the bidder's total price for the initial contract period. Certified small businesses include but are not limited to DSBSD-certified women-owned and minority-owned businesses that have also received the DSBSD small business certification. Include plans to utilize small businesses as part of joint ventures, partnerships, subcontractors, suppliers, etc. It is important to note that these proposed participation will be incorporated into the subsequent contract and will be a requirement of the contract. Failure to obtain the proposed participation percentages may result in breach of the contract.

B. Plans for Utilization of DSBSD-Certified Small Businesses for this Procurement

Micro/Small Business Name & Address DSBSD Certificate #	Status if Micro/Small Business is also: Women (W), Minority (M)	Contact Person, Telephone & Email	Type of Goods and/or Services	Planned Involvement During Initial Period of the Contract	Planned Contract Dollars During Initial Period of the Contract (\$ or %)
Totals \$					

DRPT has on its website a section on how to do business with DRPT as well as links to the Department of Minority Business Enterprises whereby small businesses can register as SWAM or DBE vendors.

Outreach is critical to the success of DRPT programs. Therefore, DRPT will provide information on how to do business with DRPT to minority chambers of commerce and other minority business organizations. DRPT will attend at least one minority business event per calendar year.

It will be part of the agency’s standard approach to business to consider how contract bundling practices during project development impact contracting opportunities for small businesses on DRPT projects. Consideration will be given to portions of a prime contract that could be extracted to create a smaller contract for small businesses.

QUOTAS (§26.43)

DRPT does not use quotas in any way in the administration of this DBE program.

DBE LIAISON OFFICER (DBELO) (§26.45)

DRPT has a designated DBE Liaison Officer (DBELO). The DBELO may be contacted at the following: 600 East Main Street, Suite 2102, Richmond, VA 23219, 804.786.4440, or drptpr@drpt.virginia.gov.

In that capacity, the DBE Liaison Officer is responsible for implementing all aspects of the DBE program and ensuring that DRPT complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the DRPT Director concerning DBE program matters.

An organization chart displaying the DBELO's position in the organization is found in Attachment 2 to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has no staff to assist in the administration of the program. The duties and responsibilities include the following:

- 1) Gathers and reports statistical data and other information as required by the DOT.
- 2) Reviews third party contracts and purchase requisitions for compliance with this program.
- 3) Works with subrecipients to set overall goals.
- 4) Analyzes subrecipients' goal development process.
- 5) Advises the Director on DBE matters and achievement.
- 6) Plans and participates in DBE training seminars.
- 7) Coordinates with Virginia Department of Small Business and Supplier Diversity (DSBSD) on the Uniform Certification Process.

FEDERAL FINANCIAL ASSISTANCE AGREEMENT ASSURANCE (§26.13)

DRPT has signed the following assurance, applicable to all DOT-assisted contracts and their administration. DRPT will also include this language in financial assistance agreements with sub-recipients:

“The Virginia Department of Rail and Public Transportation (DRPT) shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient’s DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to DRPT of its failure to carry out its approved program, DRPT may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.)”.

DBE FINANCIAL INSTITUTIONS (§26.27)

It is the policy of DRPT to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions. DRPT has made the following effort to identify and use such institutions:

The availability of DBE owned and operated financial institutions have been researched through the Commonwealth of Virginia's DBE List of Certified Vendors. There are no such institutions identified to date.

DIRECTORY (§26.25)

In support of DRPT's DBE program, the DSBSD maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of most recent certification, and the type of work the firm has been certified to perform as a DBE. DSBSD updates the directory as necessary. A copy of the directory is made available to subrecipients of DRPT. The Directory may be found at <https://directory.sbsd.virginia.gov/#/>, click on DBE Vendor Directory. (Attachment 3)

REQUIRED CONTRACT CLAUSES (§26.13, 26.29)

Contract Assurance

DRPT will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

“The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.”

Prompt Payment

DRPT will include the following clause in each DOT-assisted prime contract:

“The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than seven (7) days from the receipt of each payment the prime contractor receives from the Virginia Department of Rail and Public Transportation (DRPT) or its sub-grantees. The prime contractor agrees further to return retainage payments to each subcontractor within seven (7) days after the subcontractor’s work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of DRPT of its sub-grantees. This clause applies to both DBE and non-DBE subcontractors.”

MONITORING AND ENFORCEMENT MECHANISMS (§26.37)

DRPT will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

- 1) DRPT will bring to the attention of the Federal Department of Transportation (DOT) any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
- 2) DRPT will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 4 lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.
- 3) DRPT will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished through the utilization of Proposed DBE Bid Participation, DBE letter of intent, and Contractor's statement of DBE utilization, and will occur for each contract/project on which DBEs are participating.
- 4) DRPT will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

See Attachment 6 for statewide removal procedures.

OVERALL GOALS (§26.45)

DRPT's overall goal is 5.1% of the federal financial assistance DRPT will expend in DOT assisted contracts. DRPT will begin using its overall goal on October 1 of each year, unless DRPT has received other instructions from DOT.

GOAL SETTING AND ACCOUNTABILITY (§26.47)

If the awards and commitments shown on DRPT's Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall applicable to that fiscal year, we will:

- 1) Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments.
- 2) Establish specific steps and milestones to correct the problems identified in the analysis.
- 3) Submit the plan to FTA within 90 days of the end of the affected fiscal year.

VEHICLE MANUFACTURERS (§26.49)

DRPT will require each vehicle manufacturer, as a condition of being authorized to bid or propose on federally-assisted vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, DRPT may, at its discretion and with federal approval, establish project-specific goals for DBE participation in the procurement of vehicles in lieu of the manufacturer complying with this element of the program.

CONTRACT GOALS (§26.51)

DRPT will use contract goals to meet any portion of the overall goal it does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of DRPT's overall goal that is not projected to be met through the use of race-neutral means. DRPT will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work). DRPT will express its contract goals as a percentage of the total value of a DOT-assisted contract.

GOOD FAITH EFFORTS (§26.53)

DRPT treats offerors' compliance with good faith efforts requirements as a matter of responsibility. Therefore, each solicitation for which a contract goal has been established will require the offerors to submit the following:

- The names and addresses of DBE firms that will participate in the contract
- A description of the work that each DBE will perform
- The dollar amount or percentage of the participation of each DBE firm participation
- Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal
- If the contract goal is not met, evidence of good faith efforts

Demonstration of Good Faith Efforts

The obligation of the offeror is to make good faith efforts. The offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26.

DRPT Program Managers are responsible for determining whether an offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsible.

DRPT will ensure that all information is complete and accurate and adequately documents the offeror's good faith efforts before we commit to the performance of the contract by the offeror.

Good Faith Efforts when a DBE is Replaced on a Contract

DRPT will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. DRPT will require the prime contractor to notify the DBE Liaison Officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation. In this situation, DRPT will require the prime contractor to obtain DRPT's prior written approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

See Attachment 7.

ADMINISTRATIVE RECONSIDERATION (§26.53(D))

Within 10 days of being informed by DRPT that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Judith Gifford, Director of Accounting and Administration
DRPT, 600 E. Main Street, Suite 2102
Richmond, Virginia 23219
804.786.4440
judith.gifford@drpt.virginia.gov

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the U.S. Department of Transportation.

SAMPLE BID SPECIFICATION (§26.53(F))

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of DRPT to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of _____ percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26, to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information:

- 1) The names and addresses of DBE firms that will participate in the contract.
- 2) A description of the work that each DBE firm will perform.
- 3) The dollar amount of the participation of each DBE firm participating.
- 4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal.
- 5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4).
- 6) If the contract goal is not met, evidence of good faith efforts.

COUNTING DBE PARTICIPATION (§26.55)

DRPT will count DBE participation toward overall and contract goals as provided in 49 CFR §26.55.

CERTIFICATION (§26.81)

DRPT is a member of a Unified Certification Program (UCP) administered by the Virginia Department of Small Business and Supplier Diversity (DSBSD). The UCP meets all of the requirements of this section. DRPT will use and count for DBE credit only those DBE firms certified by the Virginia Department of Small Business and Supplier Diversity (DSBSD).

More information about the UCP can be found at:

The Virginia Department of Small Business and Supplier Diversity
1111 East Main Street, Suite 300
Richmond, VA 23219
804.786.6585
<https://egov1.virginia.gov/dbecert.html>

DRPT will use the certification standards of Subpart D of Part 26 and the certification procedures of Subpart E of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. DRPT will make certification decisions based on the facts as a whole.

Process

Certification application forms and documentation requirements can be found at <https://egov1.virginia.gov/dbecert.html>. For information about the certification process or to apply for certification, firms should contact:

The Virginia Department of Small Business and Supplier Diversity
1111 East Main Street, Suite 300
Richmond, VA 23219
804.786.6585
<https://egov1.virginia.gov/dbecert.html>

In the event DRPT proposes to remove a DBE's certification, DRPT will follow procedures consistent with §26.87 and will work with the Virginia certifying agency: The Department of Small Business and Supplier Diversity.

Certification Appeals

Any firm or complainant may appeal DRPT's decision in a certification matter to DOT. Such appeals may be sent to:

U.S. Department of Transportation
Office of Civil Rights
Certification Appeals Branch
400 7th St., SW, Room 2104
Washington, DC 20590

DRPT will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for DRPT's DOT-assisted contracting (e.g., certify a firm if DOT has determined that DRPT's denial of its application was erroneous).

Re-certifications

To date, DSBSD has reviewed and recertified all of the firms listed in the directory and determined that they meet the eligibility criteria of Subpart D of Part 26 and Subpart E of Part 26. Each firm will be recertified no later than three years from the most recent certification date. The firms will be reviewed in chronological order based on the submittal of the information required for recertification.

"No Change" Affidavits and Notices of Change

All DBEs will be required to inform DSBSD, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided with the application for certification.

Also, all owners of all certified DBEs will be required to submit to DSBSD, on the anniversary date of their certification, a "no change" affidavit meeting the requirements of 26.83(j). A copy of the renewal application can be found at <https://egov1.virginia.gov>.

DSBSD will require DBEs to submit with this affidavit documentation of the firm's size and gross receipts. DRPT will notify all currently certified DBE firms of these obligations by letter sixty (60) days in advance of the due date of the recertification information. This notification will inform DBEs that to submit the "no change" affidavit, their owners must swear or affirm that they meet all regulatory requirements of Part 26, including personal net worth. Likewise, if a firm's owner knows or should know that he or she, or the firm, fails to meet a Part 26 eligibility requirement (e.g., personal net worth), the obligation to submit a notice of change applies.

Personal Net Worth

DSBSD will require all disadvantaged owners of applicants and of currently-certified DBEs whose eligibility under Part 26 we review, to submit a statement of personal net worth at the time of certification or recertification. The statement of personal net worth can be found at <https://egov1.virginia.gov/dbecert.html>.

Reporting and Confidentiality

Monitoring Payments to DBEs

DRPT will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of DRPT or DOT. This reporting requirement also extends to any certified DBE subcontractor.

DRPT will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

DRPT will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

Reporting to DOT

DRPT will report DBE participation to DOT as follows: DRPT will report DBE participation on a semi-annual basis, using the Uniform Report of DBE Awards or Commitments and Payments. These reports will reflect payments actually made to DBEs on DOT assisted contracts.

Confidentiality

DRPT and DSBSD will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. Notwithstanding any contrary provisions of state or local law, DRPT will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

ATTACHMENT 1: CERTIFYING AGENCIES

Information and forms can be found below:

Virginia Department of Small Business and Supplier Diversity

<https://www.sbsd.virginia.gov/>

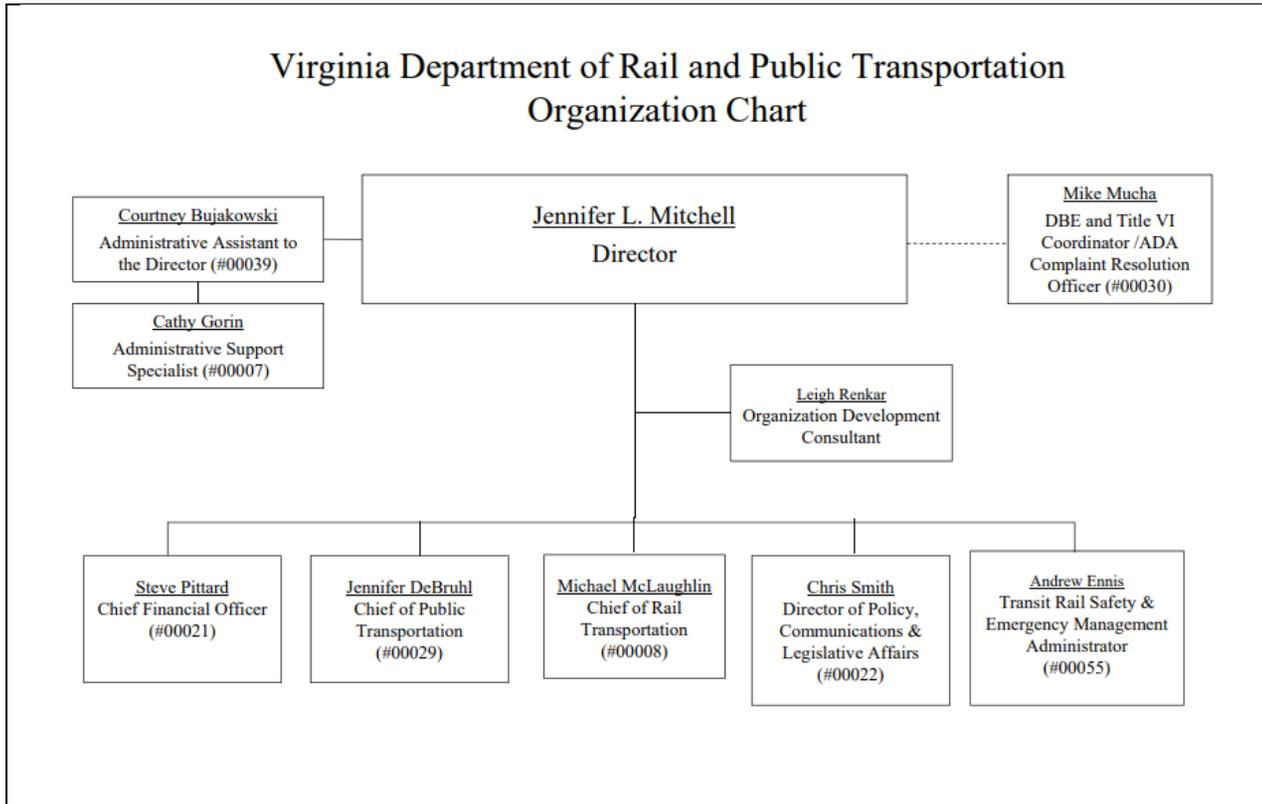
Metropolitan Washington Airports Authority

<http://www.mwaa.com/about/about-authority>

How to become DBE certified

<https://www.sbsd.virginia.gov/certification-division/>

ATTACHMENT 2: ORGANIZATIONAL CHART



ATTACHMENT 3: DBE DIRECTORY

Virginia's DBE directory can be found at the link below:

<https://directory.sbsd.virginia.gov/#/>

ATTACHMENT 4: MONITORING & ENFORCEMENT / LEGAL REMEDIES

DRPT will bring to the attention of the United States Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program so that DOT can take the steps provided in §26.107. After notifying a contractor they are in violation, DRPT will withhold payment until such violation is corrected.

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE problem, including, but not limited to, the following:

- Suspension or debarment proceedings pursuant to 49 CFR part 26
- Enforcement action pursuant to 49 CFR part 31
- Prosecution pursuant to 18 USC 1001.

ATTACHMENT 6: PROCEDURES FOR REMOVAL OF DBE ELIGIBILITY

Information and forms can be found below:

Virginia Department of Small Business and Supplier Diversity

<https://www.sbsd.virginia.gov/certification-division/>

Metropolitan Washington Airports Authority

<http://www.mwaa.com/about/about-authority>

ATTACHMENT 7: FORMS

DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

- The bidder/offeror is committed to a minimum of ____% DBE utilization on this contract.

- The bidder/offeror (if unable to meet the DBE goal of ____%) is committed to a minimum of ____% DBE utilization on this contract a submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: _____

State Registration No: _____

By: _____
Signature Title

LETTER OF INTENT

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by DBE firm:

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$ _____.

Affirmation

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By _____
Signature Title

If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

(Submit this page for each DBE subcontractor.)

[Note: the examples provided above are not intended to be the exact forms used by DOT recipients when evaluating DBE participation on bids and/or making good faith efforts determinations. DOT expects that any forms used will be tailored to each organization's specific processes and needs. Whichever forms are used in practice should be included with your DBE program.]

ATTACHMENT 8: REGULATION 49 CFR PART 26

The Code of Federal Regulations can be found at the link below:

<https://www.ecfr.gov/cgi-bin/text-idx?SID=f8181cd8c1fc90c9f6ff7ef66df2da6d&mc=true&node=pt49.1.26&rgn=div5>

ATTACHMENT 9: DRPT CONTACT FORM

For more information on the Department of Rail and Public Transportation’s DBE program, please fill in the below form and forward to the DBE Compliance Officer at drptpr@drpt.virginia.gov.

Name: _____

Address: _____

Phone Number: _____

Email: _____

Comments/Questions/Concerns:

